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UNITED STATES DEPARTMENT OF TRANSPORTATION
TRANSPORTATION SECURITY ADMINISTRATION

Aviation Security Infrastructure Fees - Interim Final Rule	Docket No. TSA-2002-11334

COMMENTS OF MONARCH AIRLINES, LTD.

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Monarch Airlines, Ltd. ("Monarch"), a United Kingdom charter air carrier which has held a foreign air carrier permit since 1981, submits these comments with respect to the Interim Final Rule as published in the Federal Register of February 20, 2002.

In submitting its comments, Monarch recognizes, and accepts, that the Rule in some aspects, is necessarily restricted by the governing statute.' The faults in the Interim Rule that Monarch addresses here, however, do not respond to mandates of the statute but

'That statute itself gallops off in all directions. § 44940 simultaneously gives the Undersecretary discretion to "impose a fee on...carriers...to pay for the difference between any [costs of security services] and the amount collected from the [passenger] fee;" a difference which he is to estimate "at the beginning of each fiscal year." [§ (a)(2)(A).] The beginning of the first fiscal year after enactment of the statute is October 1, 2002. But subsection (b)(1) authorizes the imposition of a fee that may be collected, under the statute, as early as February 18, 2002. How the Undersecretary could, or did, determine in the still fluid circumstances of early February 2002 how much would be collected from the passenger fees not effective until February 1, or how he was able to conclude that the maximum permissible amount of "infrastructure fees" would be required is not revealed.

Moreover, the fact that the timing of provision (b)(1) is permissive, and that of (a)(2)(A) is not ("at the beginning of each fiscal year") raises substantial doubt that it really would be "impractical and contrary to the public interest "first to have provided notice and opportunity for comment.

result from unreasonable or arbitrary decisions of the drafters that produce inequitable results.[2]

1. For example, §1511.5(c) accepts and applies the statutory limitation that the amount of the infrastructure fee imposed on any carrier in fiscal 2002-2004 may not exceed the amount that any carrier paid in calendar year 2002 for the screening of passengers and property transported by passenger aircraft. Although implicitly recognizing, in § 1505(e), that carriers who operated to or within the United States in 2000, but no longer do so, need not pay the infrastructure fee, the Rule failed to grant any relief to the most obvious carrier casualties of the events that gave rise to the Rule; i.e., carriers whose primary, if not exclusive, United States market has been the discretionary travel market. The regulation as it now stands would require such carriers, some of whose traffic has been almost literally decimated in the aftermath of September 11, to pay a screening fee per passenger many times the amount per passenger they paid in the year 2000. For example, in the period February 18 - September 30,2000, Monarch operated 180 aircraft rotations to the United States and transported over 60,000 passengers out of the United States. In the same period of calendar 2002, Monarch expects to operate 26 rotations and carry approximately 8700 departing passengers. Under the Interim Rule, it would have to pay approximately 7 times the dollar amount per passenger that it paid in the year 2000.[3]

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[2]Some of these comments relate to comments previously made in Docket No. TSA-2001-11120 and those points will not be belabored by Monarch here; Comments of Britannia Airways, Ltd and Monarch Airlines, Ltd filed February 27, 2002.

[3]These figures are not prognostication because Monarch now knows within a very minor margin for error how many flights and approximately how many passengers it will

Monarch is unable to state whether other British or European carriers have been affected to the same degree but there can be no question that all have suffered substantial reduction in U.S. traffic and will continue to do so in calendar 2002 and beyond. The traffic of U.S. carriers, which have benefitted from substantial contributions from the United States Government, is experiencing substantial recovery, but foreign carriers such as Monarch, have obtained neither increased traffic nor government largesse to assuage their pain.

TSA has the power to, and should correct, this inequity by authorizing a reduction in the fees to be paid in fiscal 2002-2004 proportionate to the losses of traffic that each such carrier has sustained in any of those fiscal years. There is no statutory requirement for uniformity in the infrastructure fee. To the extent that carriers have had marked reductions in traffic to and from the United States, the screening burden and the screening costs of TSA should be reduced commensurately with any such reduction in traffic.

2. To add to the injury to Monarch and, indeed, to all foreign air carriers, the Rule would impose upon them the requirement to pay as part of the infrastructure fee the cost of the Federal Air Marshals Program from which no foreign carrier derives any benefit. See Comments in Docket No. TSA-2001-11120. Here, too, there is no statutory requirement that the infrastructure fee be "uniform" and there is no rational basis for imposing upon carriers which derive no benefit from it, the costs of that program. To do

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transport in the February - September 2002 period. See Comments in Docket No. TSA-2001-1120.

so would be merely to compound the added burden per passenger, in 2002 and the future, upon foreign carriers.

3. The independent audit requirement of § 1511.9(a) imposes an additional unnecessary and duplicative burden. This is particularly true where, as in the case of many carriers, including Monarch, payments for screening are made to airport authorities on a per capita basis. The calculation is simple. The records of the U.S. airport authorities are available. Other departments and agencies of the United States Government now repetitively audit Monarch's books (i.e., Department of Agriculture (APHIS), Immigration and Naturalization Service, Customs Bureau) and these agencies have finally begun to engage, as TSA may do, in cooperative auditing by two or more agencies.

Conclusion

The United States has legitimate concerns for the safety and security of air carriage into and from the United States; and Monarch accepts that there must be some equitable sharing of the burden of assuring that result. Nevertheless, all agencies of Government should recognize that U.S. legislation and regulation in the past six months, imposing increasing financial and operational burdens upon foreign leisure passengers and their air carriers, suggests that the ultimate result, whether or not intended, will be, at least, a significant decrease in foreign air tourism to the United States.

The suggested revisions to this Rule would make at least some contribution toward avoidance of that result which would injure the United States as well as charter carriers such as Monarch.

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